

KAUFMAN DOWNING LLP

June 13, 2008

Direct: (213) 452-6550

VIA FACSIMILE & FEDERAL EXPRESS

Jeff Jordan, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

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OFFICE OF GENERAL
COUNSEL

Re: **MUR #6905**
Richard Ziman and Paul Goldenberg

Dear Mr. Jordan:

We are writing on behalf of Respondents Paul Goldenberg and Richard Ziman to respond to the Complaint filed by Obama for America in the above-referenced matter. Respondents request that this matter remain confidential in accordance with 2 U.S.C. Section 437g(a)(4)(B)(i).

1. Introduction

The Complaint does not present any legal basis under the Federal Election Campaign Act ("FECA" or "the Act") for imposing liability against Respondents Goldenberg and Ziman, nor has Complainant presented any evidence suggesting that Respondents made illegal contributions to The American Leadership Project ("ALP"). Goldenberg and Ziman were donors who simply responded to ALP's solicitation requests, but had no involvement in the organization's activities or communications. It would be unprecedented for the FEC to pursue claims against these donors under the circumstances presented here, particularly in light of prior FEC enforcement cases involving high-profile IRS Section 527 organizations that did not result in any liability on the part of donors to those organizations. (See MUR 5440 (Media Fund); MURs 5511 & 5525 (Swift Boat Veterans and POWs for Truth; MUR 5753 (League of Conservation Voters); and MUR 5754 (MoveOn.Org)). We thus urge the Commission not to take any action against Respondents Goldenberg and Ziman in this matter.

2. Respondents Did Not Make Contributions Under FECA

Respondents did not make contributions to ALP, as that term is defined under the Act. (2 U.S.C. § 431(8)(A)(i).) The ALP materials received by Respondents indicated that ALP might fund

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"electioneering communications" during the primary election season on issues of importance to the middle class, such as the economy, jobs, education and the mortgage crisis. However, the materials did not mention any federal candidate, nor did they indicate that funds would be used to support or defeat a federal candidate. In fact, the materials indicated that they would not be used for this purpose, and specifically stated that ALP would not engage in express advocacy or its functional equivalent in support of or in opposition to any federal candidate.

In reliance on ALP's representations, Respondents donated to ALP. Because the donations were not made in response to any communication that indicated the funds would be used to support or oppose the election of a clearly identified federal candidate, they are not treated as contributions under 11 C.F.R. § 100.57(a). Consequently, there is no basis for Complainant's assertion that Respondents' donations were subject to FECA's \$5,000 annual contribution limit.

3. Respondents Do Not Have Liability for Expenditures Made by ALP

As more fully addressed in the response filed by ALP and other donors, Complainant has not demonstrated that ALP made any political expenditures under the Act – either because ALP's communications contained express advocacy or because they failed to meet the requirements for electioneering communications established by the Supreme Court in *FEC v. Wisconsin Right to Life*, 127 S. Ct. 2652 (June 25, 2007) and the FEC's recent rulemaking, 72 Fed. Reg. 72899.¹

Even if such evidence existed, however, Respondents Goldenberg and Ziman had no involvement in any of ALP's communications, and they did not give money to ALP for the purpose of funding express advocacy communications. Therefore, they cannot be held accountable for ALP's actions under any theory of liability put forward by Complainant.

4. The Complaint Is An Attempt To Chill Political Speech

The Complaint targets particular donors to ALP, including Mr. Goldenberg and Mr. Ziman – both of whom made prior contributions to Hillary Clinton, Complainant's primary election opponent. The Complaint accuses Respondents of "conspiring" to circumvent campaign finance laws, and requests "heightened" penalties for "knowing and willful" violations. Yet, Complainant presents no legitimate legal basis for its claim against these Respondents. One can only conclude that Complainant filed this Complaint in an effort to intimidate donors and chill their political speech.

¹ Respondents join in the response filed by ALP and other donors, and incorporate those arguments by this reference.

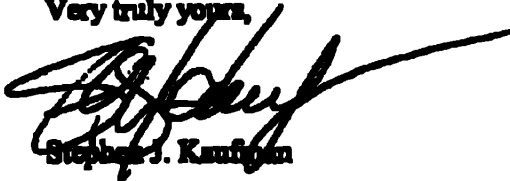
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The Commission should reject such political posturing and take no further action against Respondents Goldenberg and Ziman. Pursuing this claim against donors to ALP would represent a significant departure from the FEC's practices in prior matters that involved similar circumstances. We, therefore, urge the Commission not to pursue this Complaint against Respondents Goldenberg and Ziman.

Please feel free to contact us should you require any additional information.

Very truly yours,



Stephen J. Kaufman

cc: Paul Goldenberg
Richard Ziman

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